

Congress of the United States
Washington, DC 20515

August 19, 2020

Cheryl Stanton
Administrator
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Administrator Stanton:

We write to urge the Wage and Hour Division (WHD) to provide additional clarity on emergency paid leave eligibility for parents of children attending school this fall.

In response to the worldwide COVID-19 pandemic, the *Families First Coronavirus Response Act* (FFCRA), enacted in March 2020, provided eligible parents with up to two weeks of paid sick leave and up to twelve weeks (ten of which are paid) of emergency *Family and Medical Leave Act* (FMLA) leave to care for a child whose school is closed due to COVID-19.

We strongly believe that our nation's schools need robust funding, updated infrastructure, and enforceable workplace standards to safely re-open. For the 2020-2021 school year, schools must also be able to utilize various instructional models (i.e. virtual, in-person, or hybrid) in order to keep children, teachers, and their families safe. And as schools make decisions to safely reopen and deliver education amid the COVID-19 pandemic, working parents are left to grapple with how these instructional models may impact their eligibility for *FFCRA* emergency paid leave. We have received inquiries from Member offices with constituents who are unsure if schools that use a hybrid model, where some days are in-person instruction and some days are online instruction, are considered "closed" for the purposes of the *FFCRA*. There is also a lack of clarity on whether a parent is eligible for leave where they opt to place their child in non-required virtual learning.

In the WHD's guidance document, "Families First Coronavirus Response Act: Questions and Answers," question 70 makes clear that a school is considered "closed" for the purpose of *FFCRA* emergency leave even if "some or all instruction is being provided online or whether, through another format such as 'distance learning,' your child is still expected or required to complete assignments."¹ We urge you to update this guidance to make clear that schools that use hybrid models and offer optional virtual learning are considered "closed," consistent with the goals of paid leave under *FFCRA* and the WHD's existing guidance.

No doubt the WHD has faced challenges to responding to the pandemic, but time is of the essence. We urge you to quickly update your guidance to provide this much-needed clarity for working parents.

¹U.S. Dep't of Labor Wage and Hour Division, *Families First Coronavirus Response Act: Questions and Answers*, <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions> (last visited Aug. 18, 2020).

Sincerely,

A handwritten signature in black ink, appearing to read "Alma Adams", written in a cursive style.

Alma S. Adams, Ph.D.
Chairwoman
Subcommittee on Workforce Protections
House Committee on Education and Labor

A handwritten signature in blue ink, appearing to read "Kilili", written in a stylized, cursive-like font.

Gregorio Kilili Camacho Sablan
Chairman
Subcommittee on Early Childhood,
Elementary, and Secondary Education
House Committee on Education and Labor